

Court of Appeals, State of Michigan

ORDER

ERNIE MORGAN V MENASHA CORP

Docket No. 289321

LC No. 03-034763-NO

Deborah A. Servitto
Presiding Judge

E. Thomas Fitzgerald

Elizabeth L. Gleicher
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(D)(2), the Court orders that the Allegan Circuit Court's December 3, 2008 order denying appellant Essex Insurance Company's motion to discharge the appeal bond issued on July 25, 2006 is REVERSED. The original judgment in favor of Menasha Corporation was effectively vacated by this Court and our Supreme Court, with the matter remanded to the circuit court to address whether Menasha was entitled to summary disposition based on article 10 of its contract. In *Kroll v Crest Plastics, Inc*, 142 Mich App 284, 292-293; 369 NW2d 487 (1985), this Court concluded that where our Supreme Court vacated the trial court's original judgment and remanded for further proceedings involving resolution of factual disputes, the appeal bond could not be used to satisfy the circuit court's subsequent judgment for the plaintiff. Following *Kroll*, the circuit court's October 22, 2008 opinion and order granting summary disposition in favor of Menasha pursuant to MCR 2.116(C)(10) effectively amounted to a new judgment by the circuit court and so was not subject to the original appeal bond.

This Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

DEC 30 2008

Date

Sandra Schultz Mengel
Chief Clerk